which Lord Hardwicke did not attempt to define 200 years ago, and I certainly shall not attempt to do so now, but it is, I think, clear that the phrase covers conduct which, having regard to some special relationship between the two parties concerned, is an unconscionable thing for the one to do towards the other."

The defendants submit the non-disclosure relied on by the plaintiffs cannot amount to conduct which is unconscionable.

In my view, it is arguable that a necessary consequence of the defendants' failure to disclose to the plaintiffs the contents of the reply by the Urban Renewal Department, which they received before the plaintiffs had contracted to purchase the property, was, as they must have realised if they had given the matter any thought at all, a concealment from the plaintiffs of the real likelihood that the property would be compulsorily acquired in the near future.

Accordingly, the application is dismissed with costs in any event.

Application dismissed.

Solicitors: *Chor Pee & Co.; Khattar Wong & Partners.*

PAN ASIA SHIPYARD & ENGINEERING CO. PTE. LTD. v. LIM KUY BAK & ANOR.

[O.C.J. (Rajah J.) October 3, 1984]

[Singapore – Motion in Suit No. 5971 of 1984]

Company law – Debenture – Appointment of receiver and manager by debenture holder – Validity – Whether loan immediately payable – Injunction – Companies Act (Cap. 185), ss. 8 & 182.

The main question here was whether the appointment of the 2nd defendant by the 1st defendant on August 28, 1984 as receiver and manager under a debenture dated August 2, 1984 made between the plaintiffs and the 1st defendant (the debenture holder) was a good and valid appointment. Under clause 9 of the debenture, the person to appoint the receiver is "a Director, General Manager, Secretary or Manager for the time being of the Debenture Holder". Under clause 1 of the debenture, the loan was to be repaid by the plaintiffs to the 1st defendant within 9 months of the date of release or the disbursement of the loans, which were made during the 2nd half of August 1984.

Held: (1) the appointment of the receiver was not proper and valid;

(2) the loans had not become immediately payable to the debenture holder as they were only payable within 9 months after the lending of the moneys;

(3) the interim injunction should continue up till the date of trial or further order.

Editorial Note: The defendants appealed against the above judgment in Civil Appeal No. 67 of 1984 which was filed on November 16, 1984.

MOTION IN SUIT.

Mrs. Judith Prakash for plaintiffs/applicants.
Mrs. Anamah Tan (*Ms. Lillian Wong* with her) for defendants/respondents.

Cur. Adv. Vult.

Rajah J.: This was a Motion wherein the Plaintiffs sought the following orders:–

1) That the 2nd Defendant be restrained from acting as Receiver of the Plaintiff Company and from entering the Plaintiff Company's premises from the date hereof until after the trial of this action or until further order.

2) That the costs of this Motion be costs in the cause.

The main question here, as I saw it, was whether the appointment of the 2nd Defendant by the 1st Defendant on August 28, 1984 as Receiver and Manager under a Debenture dated August 12, 1984 made between the Plaintiffs and the 1st Defendant (the Debenture Holder) was a good and valid appointment. The clauses relevant to the appointment of Receiver and Manager are clauses 1, 6 and 9 of the Debenture which read respectively as follows:

"1. *Payment to the Debenture Holder*

The loan free of interest but together with any other money due and owing or which shall be due or owing from the Company to the Debenture Holder pursuant to this Deed shall be repaid by the Company to the Debenture Holder within nine (9) months from the date of release or disbursement of the loan.

6. *Security Enforceable in Certain Events*

(1) The whole of the loan lent or advanced by the Debenture Holder or any part thereof for the time being outstanding and unpaid together with all other moneys hereby secured shall become immediately payable to the Debenture Holder.

(2) In addition and without prejudice to the provisions aforesaid the moneys mentioned in the preceding Sub-Clause (1) hereof shall also become immediately payable in any of the events following:–

(a) If an order is made or a resolution is passed for the winding up of the Company.

(b) If a distress or execution is levied or enforced upon or against any of the chattels or property of the Company and are not paid out or discharged within five (5) days.

(c) If a receiver is appointed of the undertaking of the Company or any of its property or assets.

(d) If the Company stops payment or ceases or threatens to cease to carry on its business.

(e) If the Company commits or threatens to commit a breach of any covenant or stipulation herein contained and on its part to be observed or performed and fails to remedy it within seven (7) days after notice from the Debenture Holder requiring it so to do.

(f) If a notice or proposal for compulsory acquisition of the property charged hereunder or any part thereof shall be issued or made under or by virtue of any Ordinance Act of Parliament of other statutory provisions.

(g) If in the opinion of the Debenture Holder the security hereunder or the business of the Company is in jeopardy and notice thereof has been given to the Company.

9. *Appointment of Receiver*

At any time after the loan and other moneys hereby secured shall have become payable under Clause 6 hereof the Debenture Holder may by writing under the hand of a Director, General Manager, Secretary, or Manager for the time being of the Debenture Holder appoint any person to be a Receiver of the undertaking of the Company any of its property or assets hereby charged and may in like manner from time to time remove any such Receiver so appointed and appoint another in his stead."

In terms of Clause 9 of the Debenture, the person to appoint the Receiver is "a Director, General Manager, Secretary or Manager for the time being of the Debenture Holder" and not the Debenture Holder. I therefore held that there had been no proper and valid appointment.

By virtue of Clause 1, the loan was to be repaid by the Plaintiffs to the 1st Defendant within nine months of the date of release or the disbursement of the loans. These loans were made during the second half of August 1984. I held that under Clause 6(1) the loans had not become immediately payable to the Debenture Holder as they were only payable within nine months after the lending of the moneys.

The 1st Defendant further says that he is relying on Clause 6(2)(g) for the appointment of the 2nd Defendant as Receiver and Manager. On August 27, 1984 the 1st Defendant wrote to the Plaintiffs as follows:—

'Dear Sirs

I, Lim Kuy Bak, of 29 Watten Heights, Singapore 1128, am in receipt of letters from Tat Lee Bank Limited and Bank of China informing Pan Asia Shipyard and Engineering Company Pte Limited that the latter's account with the said Banks have *(sic)* been suspended. In view of this, it is apparent that my debenture dated August 2, 1984, and the business of the Company is *(sic)* in jeopardy.

Accordingly I am giving you notice that the loan granted by me under the said debenture has now become payable, within twenty four (24) hours from 4.00 pm August 27, 1984 pursuant to clause 6(2)(g) of the said debenture."

It will be noted that the Bank of China's letter and the Tat Lee Bank's letter are dated July 18, 1984 and August 2, 1984 respectively, both written well before the 1st Defendant lent moneys to the Plaintiffs under the Debenture. The security under the Debenture, or the business of the Company was in no greater jeopardy on August 27, 1984 than it was when the Debenture Holder made the loans to the Company. In my view this was not a *bona fide* exercise of the power and the moneys had therefore not become "immediately payable" on August 27, 1984.

I therefore ordered that the interim injunction do continue up till the date of trial or further order.

At the hearing the question of whether the 2nd Defendant was qualified to be appointed and to act as Receiver and Manager was not raised. On looking into this matter further it would appear that by virtue of section 182 of the Companies Act (Cap. 185) (the Act), the 2nd Defendant is not qualified to act as Receiver and Manager. The affidavit of the 2nd Defendant sworn to on September 4, and filed herein on September 7, 1984 gives no indication that he has complied with the provisions of section 8 of the Act.

Order accordingly.

Solicitors: *Drew & Napier; Lim Kiap Khee & Co.*